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6
7 IN THE UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 PAO VANG,
a/k/a "CLOWNSY,"
13 JHOVANNY DELGADO-MARCELO,
a/k/a "JHIO," and
14 JOHNNY XIONG,

15 Defendants.
16

CASE NO. 20-CR-116-NONE-SKO

STIPULATION TO CONTINUE;
ORDER THEREON

17 This case is set for a preliminary hearing on July 31, 2020, which the parties stipulate to continue
18 to September 21, 2020, for arraignment for the reasons set forth below. On March 17, 2020, this Court
19 issued General Order 611, which suspends all jury trials in the Eastern District of California scheduled
20 to commence before May 1, 2020. This General Order was entered to address public health concerns
21 related to COVID-19.

22 Although the General Order addresses the district-wide health concern, the Supreme Court has
23 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive
24 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.
25 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no
26 exclusion under" § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.*
27 at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
28 judge ordering an ends-of-justice continuance must set forth explicit findings on the record "either orally

1 or in writing”).

2 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
3 and inexcusable—the General Order requires specific supplementation. Ends-of-justice continuances
4 are excludable only if “the judge granted such continuance on the basis of his findings that the ends of
5 justice served by taking such action outweigh the best interest of the public and the defendant in a
6 speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets
7 forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice
8 served by the granting of such continuance outweigh the best interests of the public and the defendant in
9 a speedy trial.” *Id.*

10 The General Order excludes delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
11 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
12 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
13 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
14 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
15 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
16 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
17 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
18 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

19 In light of the societal context created by the foregoing, this Court should consider the following
20 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
21 justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date
22 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
23 pretrial continuance must be “specifically limited in time”).

24 STIPULATION

25 Plaintiff, United States of America, by and through its counsel of record, the United States
26 Attorney for the Eastern District of California and the defendants, PAO VANG, a/k/a “CLOWNSY,”
27 JHOVANNY DELGADO-MARCELO, a/k/a “JHIO,” and JOHNNY XIONG, by and through their
28 counsel, hereby agree and stipulate to continue this matter until September 21, 2020.

The defendant also agrees to exclude for this period of time any time limits applicable under 18 U.S.C. § 3161. The parties agree that the continuance represents the reasonable time necessary for effective preparation of counsel. 18 U.S.C. § 3161(h)(7)(A)-(B)(iv). In support thereof, the parties stipulate that:

1. This case is set for a preliminary hearing on July 31, 2020. On July 23, 2020, the government filed an indictment and the preliminary hearing is no longer necessary.
2. Moreover, the government has provided the defendants with discovery that includes audio files, video files, and numerous reports. The government also agreed to produce an index for those files to the defense. The defense is continuing to review those documents.
3. Therefore, the parties agree that a continuance until September 21, 2020, is warranted because the defense needs time to review the discovery and the preliminary hearing is not necessary.
4. The parties stipulate that the period of time from July 31, 2020, through September 21, 2020, is deemed excludable pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i) and (iv) because it results from a continuance granted by the Court at defendants' request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

IT IS SO STIPULATED.

Dated: July 30, 2020

MCGREGOR W. SCOTT
United States Attorney

By: /s/ THOMAS NEWMAN
THOMAS NEWMAN
Assistant United States Attorney

Dated: July 30, 2020

/s/ Benjamin A. Gerson
Attorney for Defendant
JHOVANNY DELGADO-MARCELO

Dated: July 30, 2020

/s/ Robert Lamanuzzi
Attorney for Defendant

JOHNNY XIONG

Dated: July 30, 2020

/s/ Harry Drandell
Attorney for Defendant
PAO VANG

ORDER

IT IS ORDERED that the July 31, 2020 hearing in this matter is continued for an arraignment on September 21, 2020, at 2 pm.

IT IS FURTHER ORDERED THAT the period of time from July 31, 2020, through September 21, 2020, is deemed excludable pursuant to 18 U.S.C. §§ 3161(h)(7)(A), 3161(h)(7)(B)(i) and (iv), and Fed. R. Crim. P. 5.1(d), because it results from a continuance granted by the Court at defendants' request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendants in a speedy trial.

IT IS SO ORDERED.

Dated: July 30, 2020

/s/ *Eric P. Gong*
UNITED STATES MAGISTRATE JUDGE